

ISSUE DATE: September 1, 1995

DOCKET NO. P-5071/CT-94-692

DOCKET NO. P-5071,1523/PA-95-189

ORDER DENYING REQUEST FOR A CERTIFICATE OF AUTHORITY, CLOSING
DOCKET, REVOKING CERTIFICATE OF AUTHORITY, AND REFERRING MATTER
TO THE OFFICE OF ATTORNEY GENERAL

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request of Continental
Payphone Service, Inc. for Authority to
Provide Coin-operated Telephone Service

ISSUE DATE: September 1, 1995

DOCKET NO. P-5071/CT-94-692

In the Matter of the Request of PayCom
Systems Corporation for Approval of an Asset
Transfer from PayCom to Continental

DOCKET NO. P-5071,1523/PA-95-189

ORDER DENYING REQUEST FOR A
CERTIFICATE OF AUTHORITY, CLOSING
DOCKET, REVOKING CERTIFICATE OF
AUTHORITY, AND REFERRING MATTER
TO THE OFFICE OF ATTORNEY
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PROCEDURAL HISTORY

On February 26, 1991, the Commission granted PayCom Systems Corporation (PayCom) a certificate of authority to provide standard coin-operated telephone service in Minnesota. Docket No. P-5123/CT-90-1140.

In December, 1993, Continental Payphone Service, Inc. (Continental) purchased PayCom's Minnesota pay telephone route. Continental took control of the route in March, 1994.

On July 27, 1994, Continental filed a request for Commission authority to provide pay telephone service in Minnesota.

On October 13, 1994, the Commission issued an Order addressing Continental's request for authority. In that Order the Commission noted that neither Continental nor PayCom had sought approval of the transfer of telephone assets, as required under Minn. Stat. § 237.23. The Commission decided to defer consideration of Continental's request for authority to provide service until the matter of the asset transfer was resolved. The Commission ordered Continental and PayCom to either file for approval of a transfer of assets or explain why they believed approval was not necessary. The companies were required to submit the filing within 30 days of the Order.

Although the companies did not submit the required filing within their 30 day deadline, they did request a 60-day filing extension on December 5, 1994. The Commission granted the time extension on January 9, 1995.

On March 3, 1995, Continental and PayCom filed a joint petition requesting approval of their March, 1994, asset transfer.

On June 1, 1995, the Department of Public Service (the Department) filed comments.

On August 22, 1995, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

The Commission has learned that Continental has defaulted on its lease of telephone equipment and payphone sites related to the pay telephone route formerly owned by PayCom. Under the terms of its lease, the rights to all equipment and sites have reverted to the lessor, Berthel Fisher & Company Leasing, Inc.

The lessor, which is not in the telephone business, has reached an agreement with Payphones of America (POA) to assume management and eventual ownership of the pay telephone property. POA has received Commission authority to provide pay telephone service in Minnesota. Docket No. P-5219/CT-95-657. POA is also preparing a filing to request Commission authority to assume control of the former PayCom/Continental telephone equipment and sites.

When contacted by Commission Staff, the president of Continental indicated that Continental does not intend to provide further telephone service in Minnesota.

II. COMMENTS OF THE DEPARTMENT

In its June 1, 1995, comments, the Department stated that three violations of Minnesota statutes and Commission Orders had occurred during the transfer of assets from PayCom to Continental.

First, the two companies did not request Commission authority for the asset transfer from March 1, 1994, when Continental took over the routes, to October 13, 1994, when the Commission allowed the companies 30 days to file a petition requesting authority. The companies were thus in violation of Minn. Stat. § 237.23 for 227 days.

Second, the companies still did not file a petition requesting approval of their asset transfer within the 30 days allowed by the Commission in its October 13 Order.

Third, Continental provided telephone service in Minnesota without Commission authority from March 1, 1994, when it took over PayCom's route, to July 27, 1994, when it filed its request for authority to provide service. Continental therefore provided service without authority for 149 days.

The Department recommended that the Commission refer the matter to the Office of Attorney General, pursuant to Minn. Stat. § 237.461, for possible penalties.

In its filed comments, the Department also recommended that the Commission approve Continental's request for a certificate of authority, approve the transfer of assets from PayCom to Continental, and revoke PayCom's certificate of authority. Since the facts regarding Continental's financial circumstances came to light, the Department recommended that Continental's request for a certificate of authority be denied, and that the docket on the asset transfer from PayCom to Continental be closed.

III. COMMISSION ACTION

A. Continental's Request for a Certificate of Authority

Continental has defaulted on its lease of pay telephone equipment and site contracts; the rights in the equipment and sites have reverted to the lessor. Continental no longer controls the equipment or space necessary to provide pay telephone service in Minnesota. Continental has also stated that it does not intend to provide service in the state.

Clearly, Continental is not capable of providing "reasonably adequate service and facilities for the accommodation of the public" as required of every Minnesota telephone company under Minn. Stat. § 237.06. Continental does not qualify for a Commission determination that the "public convenience and necessity" require its certification under Minn. Stat. § 237.16, subd. 4. The Commission will therefore deny Continental's pending request for a certificate of authority to provide pay telephone service.

B. The Transfer of Assets from PayCom to Continental

Continental no longer has either the necessary equipment or the intention to serve pay telephone customers in Minnesota. PayCom's and Continental's joint application for Commission approval of a transfer of telephone assets from PayCom to Continental is therefore moot. The Commission will close the pending docket, No. P-5071,1523/PA-95-189,

without further action.

C. PayCom's Certificate of Authority

Since PayCom transferred control of its Minnesota pay telephone equipment and site contracts to Continental in March, 1994, PayCom has not provided service in the state. PayCom has not indicated an intention of resuming service in Minnesota, and does not seem to remain a viable corporate entity.

For these reasons the Commission will revoke PayCom's certificate of authority to provide pay telephone service in Minnesota.

D. Referral of These Issues to the Attorney General for Penalty Proceedings

Under Minn. Stat. § 237.461, the Commission has the discretion to refer matters to the Office of Attorney General for civil penalty proceedings, if the Commission determines that the party in question "knowingly and intentionally" violated relevant statutes or Commission rules or Orders.

In a January 25, 1995, Order regarding penalty proceedings for Kantel Communications, Inc.¹, the Commission explained what is meant by a "knowing and intentional" violation of statutes, rules, or Orders. Quoting a Minnesota Court of Appeals decision² in which the Court drew from criminal law to determine a question of intent under civil law, the Commission stated that an intentional act is committed when "the actor has a purpose to do the thing or cause the result specified" and the actor has "knowledge of those facts that are necessary to make the actor's conduct criminal." Because Kantel knew of the Commission's rate requirements and continued to charge rates in excess of those requirements, the Commission found that the telephone company had knowingly and intentionally violated the Commission's Order and should be referred for penalties. Poor advice from counsel or lack of familiarity with Minnesota law did not excuse or mitigate the telephone company's knowing and intentional actions.

In the case currently before the Commission, PayCom and Continental knew or should have known that they must petition for a transfer of telephone assets under Minn. Stat. § 237.23, yet they failed to do so for a period of 227 days. The Companies acted in direct contravention of Commission Order when they failed to file their request for a transfer of assets within 30 days of the Commission's October 13, 1994, Order. Continental knowingly provided telephone service in Minnesota without Commission authority for 149 days, from March 1, 1994, to July 26, 1994, at which time it finally requested authority to provide service.

¹ In the Matter of a Request by Kantel Communications, Inc. for Authority to Transfer Assets to Peoples Telephone Company, Inc., Docket No. P-1621, 1466/PA-93-1184, ORDER DENYING RECONSIDERATION AND ALLOWING ADJUSTMENT OF REFUND.

² Claude v. Collins, 507 N.W.2d 452, 456 (Minn. App. 1993), aff'd in part, 518 N.W.2d 843 (Minn. 1994).

Each of these actions was carried out when the Companies knew or should have known that their actions violated relevant statutes, rules, and Orders. In one of the instances, the Companies had received direct instruction on compliance and a grace period in which to comply.

The fact that the telephone companies are headquartered outside the state does not excuse their noncompliance. As the Commission stated in the Kantel Order, “the Commission has the right to expect regulatory compliance from [out-of-state] companies, and the duty to enforce compliance if necessary.”

The Commission therefore finds that PayCom and Continental knowingly and intentionally violated relevant statutes, rules, and Commission Orders, and refers Continental and PayCom to the Office of Attorney General for enforcement proceedings pursuant to Minn. Stat. § 237.461.

ORDER

1. The Commission denies Continental’s request for a certificate of authority to provide pay telephone service.
2. Docket No. P-5071,1523/PA-95-189 is closed.
3. PayCom’s certificate of authority to provide service is revoked.
4. The Commission refers Continental and PayCom to the Office of Attorney General for enforcement proceedings pursuant to Minn. Stat. § 237.461.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)